IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.220 OF 1997
IN
NOTICE OF MOTION NO.2317 OF 1992
IN
SUIT NO.2632 OF 1992

M/s.Honesty Builders Private Ltd. .. Appellant

v/s.

Daruwalawadi Co-operative Housing
Society Ltd. & ors. .. Respondents

Mr.C.S.Kapadia with Mr.V.K.Merchant i/by
M/s.Kishore Thakordas & Co.for the appellant.

Mr.B.D.Joshi with Ms.B.L.Mahant i/by M/s.Divya Shah
& Associates for the respondent No.1.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 8th December, 2005

P.C.

Heard.

2. The learned motion Judge vide impugned order directed the parties to maintain status-quo in respect of the subject property. At the time of admission of the appeal, this court passed the following order:-

> "We have heard Mr.Chagla, the learned counsel for the appellants. Mr.Chagla submits that status-quo order will cause great hardship and irreparable damage to the appellants. It is submitted by Mr.Chagla that the appellants are prepared to give an undertaking to this Court not to create any third party rights in the property in question and/or transfer any constructed portion of the building to any party without orders of this Court. He

> also undertakes not to claim any equity on the ground that construction had been undertaken by the appellants hereafter. Mr.Joshi, the learned counsel for the respondent No.1 wants it to be made clear that the appellants will not part with possession of the property to anybody in any manner. Mr.Chagla also undertakes to do so.
>
> The above undertaking has been given by Mr.Chagla on the instructions of his client, the director of the Company, who is present in the Court. He also assures that the undertaking will be filed in writing by the director of the Company today in the above terms. The undertaking is accepted."

3. We are informed that the appellant has thereafter developed the property.

4. The order dated 17th April, 1997 is based on the undertaking of the appellant that the development made by the appellant in the subject property shall not create any equity in its favour and that the appellant shall not create any third party right in the subject property and/or transfer any constructed portion of the building to any party without the orders of this court nor shall the appellant part with possession of the subject property in any manner.

5. We are satisfied that the appeal deserves to be disposed of in terms of the order dated 17th April, 1997 aforenoted. If the appellant has breached the undertaking, the law will take its own course. We are informed that contempt proceedings in this

regard are pending. Obviously, the said contempt proceedings shall be heard and decided on its own merits.

6. Appeal is, thus, disposed of as indicated above.

No costs.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)